

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

FILED
05/02/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0493-R-2022
Nordlund, Julia
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Constance Cowett Qual. Personal Residence Trust

CASE 41H-0493-R-2022
41H 215738-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this Master's Report. The original objection and a certificate of mailing to all parties on the Service List must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water right claim 41H 215738-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC). To address the issue remarks, the Water Court consolidated the claim into case 41H-0493-R-2022.

FINDINGS OF FACT

1. Claim 41H 215738-00 appeared in the Basin 41H Preliminary Decree with the following issue remarks:

CLAIM FILED LATE 06/28/1996. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON MIDDLE COTTONWOOD CREEK WITH A PRIORITY DATE POSTDATING CASE NO. 6757, GALLATIN COUNTY

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

2. The first two remarks are to provide notice to other water users of potential issues with the claim, however no objections were filed and these remarks can be removed.
3. The Water Court issued an Order Setting Filing Deadline for Claimants Constance Cowett Qual. Personal Residence Trust (Claimant) to file evidence supporting the claimed reservoir by December 12, 2022. The Court stated that, pursuant to Rule 22, W.R.Adj.R., the claim would have its reservoir removed if Claimant did not comply with the Order and file evidence by the deadline.
4. The filing deadline passed and, as of the date of filing of this Master's Report, Claimants did not file evidence or contact the Water Court to resolve the issue remark.

CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, MCA.
2. The Water Court is required to resolve all issue remarks not resolved through the objection process. Section 85-2-248(2), MCA. When resolving issue remarks, the Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.
3. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33.
4. If a claimant fails to comply with an order issued by the Water Court, the Court may, upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.
5. Pursuant to Section 85-2-248(9), MCA, and Rule 22, W.R.Adj.R., when a claimant fails to comply with an Order issued by the Water Court, including an Order issued by a Water Master appointed by the Court, the Court, upon motion, or its own initiative, can: 1) amend the elements of the claim to conform with the information in the claim file or information obtained by the Court, or 2) terminate the claim.
6. Claimant failed to comply with the Water Court's Order to file evidence and participate in the adjudication process to resolve the issue remarks. Claimant's failure to comply, the lack of supporting documentation in the claim file, and the inability of the Court to locate the reservoir are sufficient to justify the removal of the reservoir from the claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

Post Decree Abstracts of Water Right Claim are served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED.

Service via USPS Mail:

Constance Cowett Qual. Personal Residence Trust
4850 Jordan Spur Rd
Bozeman, MT 59715

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 215738-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: COWETT, CONSTANCE QUAL. PERSONAL RESIDENCE TRUST
4850 JORDAN SPUR RD
BOZEMAN, MT 59715

Priority Date: MAY 1, 1949

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 06/28/1996 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** MIDDLE COTTONWOOD CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWSW	9	1S	6E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: DAVIS DITCH

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2SWSW	8	1S	6E	GALLATIN